IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2007

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

W.P.NO.1987 OF 2007
AND
M.P.NOS.1 AND 2 OF 2007

R.Prabakaran ...Petitioner

Vs.

1.The Regional Transport Authority(District Collector),
Nagapattinam District,
Nagapattinam

2. The Secretary to the Regional Transport Authority,
Regional Transport officer,
Nagapattinam

3. The Regional Transport officer,
Karur.

4. M.Moorthy,
S/o Muthukrishna Naidu
No.1, Sivasakthi Nagar,
Nagapattinam Taluk and District. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified mandamus as stated within.

For Petitioner: Mr.R.Karthikeyan

For Respondent Nos.1 to 3: Mr.V.Arun
Additional Government Pleader

For Respondent No.4: Mr.S.Sounthar

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O R D E R

Seeking to issue a writ of Certiorarified mandamus calling for the records comprised in Memo R.No.A2/35031/2006 dated 29.12.2000 on the file of the second respondent and the consequential Memo No.01831/A2/2007 dated 11.1.2007 on the file of the third respondent and quash the same and consequently direct the third respondent to effect transfer of the permit in respect of the Stage Carriage Bus TN-51-B-4242, this writ petition has been brought forth before this Court.

2. Affidavit filed in support of the petition is perused.

3. The Court heard the learned counsel on either side.

4. The case of the petitioner in short is that a stage carriage bus bearing Registration No.TN-51-B-4242 plying on the route from Nagore to Vedaranyam was purchased by one Kanagarajan from its owner along with the route. The said Kanagarajan, the owner of the vehicle as well as the permit holder was not able to ply the vehicle due to various commitments and therefore he wanted to transfer the same along with the vehicle . Accordingly, the owner of the vehicle wanted to transfer the permit in the name of the petitioner who undertook to ply the vehicle by absorbing the existing crews and paying the financial dues to the hire purchase agreement holder . Both of them have made a joint application on 7.12.2006. wherein the first respondent had called for objection as per the provisions of the Act and accordingly objections were received and orders were passed by the first respondent by his proceedings No. A2/35031/06 dated 22.12.2006 transferring the permit from the name of the original ownership to the name of the petitioner and also directed the petitioner to produce Registration certificate transferring his name along with the Fitness certificate, Insurance certificate and current taxes to his office. Accordingly, the petitioner produced all the certificates required and thereafter applied to the third respondent to have the vehicle to transfer in his name as the third respondent is the jurisdictional authority in respect of the transfer of ownership of the vehicle. The said application was submitted to the third respondent on 10.1.2007. While the matter stood thus, on 4.1.2007 the petitioner received a communication from the second respondent dated 29.12.2006 calling upon the petitioner and the owner of the vehicle to appear before the first respondent for an enquiry on 22.1.2007 and thereafter the third respondent by a communication dated 11.1.2007 had informed the

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petitioner to appear before the first respondent and thereafter re-submitted the application along with the records. Thereafter, the petitioner came to know that the fourth respondent has raised certain objections and on the strength of which, now the authorities have attempted to reopen the proceedings and issued notice for enquiry on 22.1.2007. Under such circumstances, this writ petition has been brought forth before this Court.

5. In support of the writ petition, learned counsel for the petitioner would submit that once a joint application was filed and after considering the objections raised, an order came to be passed by the first respondent in exercise of the powers under Section 82(1) of the Motor Vehicles Act ordering transfer of the permit from the name of the original owner to the name of the petitioner and the petitioner was also called upon to produce all the certificates which accordingly done, if a person is aggrieved over such an order of transfer, the only remedy available to the petitioner is to prefer an appeal under Section 89 of the said Act and there is no question of reopening the orders already passed. Under such circumstances, the notice issued for the alleged enquiry dated 22.1.2007 is illegal and hence it has got to be quashed.

6. Learned counsel for the fourth respondent would submit that the orders of the first respondent could not have passed an order on 25.12.2006 which is a public holiday.When such a contentions was raised, the learned Government Advocate was directed to produce the file and now the files are produced before this Court. From the files it is revealed that the order under challenge was prepared on 21.12.2006 and the order was passed by the first respondent on 25.12.2006. Now the learned counsel for respondents 1 and 3 would submit that the orders were actually passed by the authority on 25.12.2006.

7. The Court paid its anxious consideration on the rival submissions made. After doing so, this Court is of the considered opinion that the impugned notice issued by the second respondent and the further notice issued by the third respondent for enquiry to be conducted on 22.1.2007 have got to be necessarily quashed. In the instant case, it is not in controversy that joint application was made by the original owner of the vehicle along with the purchaser, viz.,the petitioner herein on 7.12.2006. It is not also in dispute that objections were called for and after scrutinizing the objection, an order came to be passed by the first respondent transferring the permit from the name of the original owner and thereafter the third respondent also called upon the petitioner to produce necessary certificates and which has also been done by the petitioner. The further procedural formality was only to effect the transfer of

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ownership of the vehicle. While the matter stood thus, an objection was made by the fourth respondent and after receiving the objections, now the impugned notice was issued by the second respondent and following the same, consequential notice was issued by the third respondent. While the order of transfer of permit was already passed by the the first respondent herein and necessary certificates were produced by the petitioner before the third respondent , no question of reopening the proceedings merely on the basis of the objections raised by an individual. If really the fourth respondent is aggrieved by such an order of transfer made by the first respondent, the remedy open to him is to prefer an appeal as one envisaged under Section 89 of the Motor Vehicles Act and not otherwise.

8. Under such circumstances, both the notices issued by the first respondent dated 29.12.2006 by the second respondent and consequently the other notice issued by the third respondent dated 11.1.2007 for enquiry to be held on 22.1.2007 are bad and hence they are declared as invalid and liable to be quashed and accordingly quashed. This order will not stand in the way of the fourth respondent in preferring appeal as the one contemplated under the provisions of the said Act and when the appeal is preferred, if any delay is noticed, the appellate authority may take into consideration the pendency of writ proceedings in this Court.

9. The writ petition is ordered accordingly. No costs. Consequently, MP.Nos.1 and 2 are closed.

VJY

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Regional Transport Authority(District Collector),
Nagapattinam District,
Nagapattinam

2. The Secretary to the Regional Transport Authority,
Regional Transport officer,
Nagapattinam

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3. The Regional Transport officer,
Karur.

+ 1 cc to the Government Pleader, SR No.61750

+ 1 cc to mr. S. Sounthar, Advocate SR No. 61321

+ 1 cc to M/s. R. Karthikeyan, Advocate SR No. 61150

AD(CO)
SR/10.10.2007

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